

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MICHAEL ROBERTS,

Defendant-Appellant.

---

UNPUBLISHED

May 13, 1997

No. 189188

Jackson Circuit Court

LC No. 95-071949-FH

Before: D.F. Walsh,\* P.J., and R.P. Griffin\*\* and W.P. Cynar,\* JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and habitual offender, third offense, MCL 769.11; MSA 28.1083. The record indicates that the trial court sentenced him to four to fifteen years' imprisonment for the CSC II conviction and to seven to thirty years' imprisonment for the habitual offender conviction. Defendant appeals as of right. We remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

It is not clear from the record whether the trial court simply failed to vacate the sentence imposed on the CSC II conviction after imposing the habitualized sentence or whether the court considered defendant's habitual offender conviction to be a substantive offense separate from and independent of the CSC II conviction. If it was the former, we remand the matter and direct the trial court to vacate the sentence imposed on the CSC II conviction. Assuming this is relief given by the trial court, defendant's seven- to thirty-year sentence shall be upheld because we find that it does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). If it was the latter, we remand the matter for resentencing because the court erred as a matter of law in imposing

---

\*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

\*\*Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

a separate concurrent sentence for the habitual offender conviction. *People v Connor*, 209 Mich App 419, 426; 531 NW2d 734 (1995); *People v Hardin*, 173 Mich App 774, 778; 434 NW2d 243 (1989).

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar